

- C. Group III, drawn to a different method for making the polymer, presently comprising claims 6 and 7;
- D. Group IV, drawn to a method for treating the polymer, presently comprising claim 8;
- E. Group V, drawn to a different method for treating the polymers, presently comprising claim 9;
- F. Group V, drawn to a further treatment of the product of the Group IV method, presently comprising claims 10 and 11.

Applicants hereby elect, with traverse, Group I, presently comprising claims 1 and 2. Applicants hereby elect with traverse the species of claims 1 and 2 wherein R_3 is OH, R_2 is NO_2 , and R_1 , R_4 and R_5 are H.

This restriction requirement is traversed on multiple grounds, including that the statutory standard has not been met; the classification system does not support a restriction requirement; applicants have a right to define their invention; there is no serious search burden; applicants have paid for an examination of all claims, and in any case, discretion should be exercised and restriction not required.

Applicant Has a Right to Define the Invention

By requiring restriction, applicants are deprived of their statutory rights under 35 U.S.C. 112 to have "claims particularly pointing out and distinctly claiming the subject matter which applicant regards as his invention." The Examiner has, in effect, carved out a portion of applicants' invention and rejected it under the guise of an election requirement under 35 U.S.C. 121. This the commissioner may not do.

Applicant Has Paid for Examination of All Claims

Having paid an application fee, applicants are entitled to have the Examiner determine the novelty and non-obviousness of the subject matter claimed. If the position of the Examiner is accepted, applicants will be burdened with the expense of additional applications. These expenses include government filing fees, issue fees and maintenance fees, in addition to attorneys' fees and the value of the time that the inventor will necessarily spend during prosecution.

Restriction is Discretionary

Even if the statutory standard has been met, discretion should be exercised in this case and election not required for the reasons given herein.

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Reply to Office Action of October 6, 2005

Withdrawal of the election requirement is
respectfully requested.

If the election requirement is maintained, it will
be clear on the record that the PTO considers the groups to be
patentably distinct from one another *i.e.*, *prima facie* non-
obvious from one another. This means that a reference
identical to the one group would not render the other group
prima facie obvious.

Favorable consideration and examination of all
pending claims on the merits are respectfully requested.

Respectfully submitted,

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